

Software and Services Special Option

The terms of this Software and Services Special Option ("Agreement") between **Commonwealth of Massachusetts Executive Office of Technology Services and Security ("EOTSS")**, on its own behalf and on behalf of the **Commonwealth of Massachusetts Executive Department ("Client"**, also called "Customer", "you" and "your") and **International Business Machines Corporation ("IBM")** are subject to the terms of Statewide Contract ITS55DesignatedITD, dated March 17, 2017 ("ITS55"), including all documents listed in Section 1.8 (Order of Priority) of the Master Agreement, and all attachments thereto (collectively, the "**Associated Documents**"), which govern the acquisition of the SSSO Offerings.

1. Confidentiality

Both parties understand that the terms of this Agreement (including the price offered to Client as part of this offering) are confidential, and both parties agree not to disclose the terms of this Agreement to any third party (including any agent, advisor, or consultant) without the other party's prior written approval pursuant to a written non-disclosure Agreement, unless required by law. No obligation of confidentiality applies to information already in a party's possession without obligations of confidentiality. Each party may disclose the terms and conditions of this Agreement to the extent reasonably necessary, on a confidential basis, to the SLR Reviewer and to each party's accountants, attorneys, and financial advisors.

2. Definitions

The definitions in the Associated Document(s) shall apply to any capitalized term in this Agreement, unless such term is modified by this Agreement.

Option Charges - the total payment under this Agreement, as detailed in Section 8.

Previously Deployed Listed Software Products – Listed Software Products identified as "Previously Deployed Listed Software Products" on Schedule A that were identified by the SLR (as defined below) as being deployed prior to the Start Date and are subject to the Release section of this Agreement.

3. Contract Term

This Agreement starts on **June 30, 2018 ("Start Date")**. The S&S coverage provided in Schedule A starts on June 30, 2018 and remains in effect up to and including **June 30, 2019**, unless terminated earlier as provided herein.

4. SSSO Offerings

The offerings that qualify for the terms of this Agreement ("**SSSO Offerings**") may only be acquired directly from IBM and are as follows:

Products included in **Schedule A – Previously Deployed Listed Software Products**, which is attached to and made part of this Agreement (the "**Listed Software Products**") are comprised of the following:

- i. Products and Programs
- ii. IBM Subscription and Support ("S&S") renewals for previously acquired Programs

Included in the Option Charges are charges for any applicable S&S and such S&S has a coverage period up to and including **June 30, 2019**.

5. Associated Documents and Use of SSSO Offerings

ITS55, including all attachments thereto and all documents listed in the Order of Priority set forth in the Master Agreement Section 1.8, comprises the Associated Documents and governs the use of SSSO Offerings.

6. Software License Review

International Business Machines Corporation thanks Commonwealth of Massachusetts for its continued support and cooperation throughout the IBM Software License Review ("SLR"). This SSSO serves to formally

close the recent SLR conducted by Deloitte & Touché ("SLR Reviewer") on behalf of IBM regarding your use of certain IBM software.

The SLR Reviewer provided the Effective License Position ("ELP") report dated 3/30/2018 regarding its SLR. In response to the ELP, the Client, utilizing KPMG, reported its findings and conclusions to IBM. Both IBM and Client negotiated the resolution of the SLR as outlined in this SSSO.

In the interest of resolving the Software License Review ("SLR"), Client agrees to pay the Option Charges listed in Section 8 of this Agreement to IBM on or before June 30, 2018 and IBM agrees to make available to Client all of the Eligible Programs on Schedule A – Previously Deployed Listed Software Products on or before June 30, 2018.

Sub-Capacity Licensing

The Previously Deployed Listed Software Products listed on Schedule A are products granted at sub-capacity licensing on a retroactive basis.

The terms for sub-capacity licensing are included in the parties' IBM International Passport Advantage Agreement under ITS55 ("Passport Agreement") or an Attachment for Sub-Capacity Terms under ITS55 and govern the transaction when Client obtains eligible sub-capacity products from IBM or an authorized IBM reseller for use in an eligible virtualization environment. The Passport Agreement and any Attachment for Sub-Capacity Terms are subject to the Order of Priority set forth in Section 1.8 of the ITS55 Master Agreement.

Release

In consideration of the terms and conditions set forth herein, and the payment by EOTSS of the Option Charges, IBM for itself, its affiliates, and its and their respective successors and assignees, releases, waives, and forever discharges the Commonwealth of Massachusetts Executive Department, and past and present employees, agents, shareholders, officers, directors, predecessors, if any, joint ventures, successors and assignees, heirs, executors, administrators and trustees from any and all suits, causes of action, claims, allegations, and demands whatsoever in law or in equity which it now has or to which it may hereafter become entitled on account of any act, failure to act, or event occurring prior to June 30, 2018 arising out of the deployment or use of all IBM software products for which IBM had a right to perform a software verification under the parties' Statewide Contract ITS41DesignatedITD, signed June 29, 2010 ("ITS41"), or under ITS55 (the "Release").

IBM and Customer agree that this Agreement and Client's payment of the Option Charges listed herein shall not in any way be construed as an admission by Client of any non compliance liability whatsoever. Client agrees that this Agreement and the resolution of the SLR described herein comply with all applicable laws and contracts, including procurement and finance rules and regulations.

7. Verification

Client may deploy the SSSO Offerings, as permitted by Client's Associated Documents up to the maximum level of use authorizations (quantities) specified in this Agreement.

Except as provided in this Section 7, Client and IBM agree that the verification and reporting provisions of the Associated Documents shall govern with respect to the verification and reporting terms for the products acquired hereunder.

IBM agrees it will not conduct, and that the Client has no obligation to conduct, a software license verification of the Commonwealth of Massachusetts Executive Department, or any Secretariat therein, with the terms of this Agreement, or of the Associated Documents ("IBM License Terms") at any point during the three (3) year period that begins on June 30, 2018 unless (i) IBM has a good faith and reasonable basis on which to believe that a violation of the IBM License Terms has occurred, and (ii) IBM provides to Client supporting written documentation identifying such reasonable basis ("Reasonable Basis Verification") that in the written opinion of both Client and IBM, would lead a reasonable person to believe that a violation of the IBM License Terms

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has occurred. IBM agrees that any Reasonable Basis Verification shall be limited to only the scope of the documentation provided and necessary to resolve the Reasonable Basis Verification. This does not affect Client's obligations to remain in compliance with the governing license terms. You agree you are responsible for IBM Subscription and Support or Selected Support charges for any over deployments or over usage (the "Excess") identified in the result of the first verification following June 30, 2018 for the lesser of the duration of the Excess or three (3) years from June 30, 2018.

Unless specifically agreed herein or in another signed agreement in writing between Client and IBM, the licenses for the Programs and S&S acquired under this Agreement may not be used to settle or resolve any software license non-compliance by Client that occurred prior to the Start Date of this Agreement. Further, unless otherwise agreed to by the parties in writing, the licenses for the Programs and S&S acquired under this Agreement may not be used as authorization to deploy Programs prior to the Start Date.

For the avoidance of doubt, the parties acknowledge that as of the Start Date, IBM's reporting of IBM's provisioning of software, appliances, maintenance, and technical support under ITS55 is governed solely by the reporting requirements therein. This Agreement shall not alter or amend Client's reporting requirements under ITS55.

8. Charges

In consideration of the terms and conditions set forth herein, and in exchange for the Release, Client will pay the Option Charges below in accordance with the following schedule:

Due Date	Amount Due
June 30, 2018	US \$ 6,600,004.20

9. Termination

This Agreement may be terminated by mutual written agreement of the parties.

Notwithstanding any such termination, the Release shall perpetually survive termination of this Agreement.

10. General

- a. Acquisitions made under this Agreement may not be resold, rented, leased or transferred to third parties, provided that in accordance with ITS55, Client may transfer S&S, and if permitted under applicable legislation, may use S&S for the purpose of providing services to other Eligible Entities, as defined in ITS55 Master Agreement Section 1.5.
- b. Each party will identify one point of contact to facilitate communication between the parties and the management of this Agreement. The Commonwealth hereby identifies Sean Vinck, Assistant Secretary, General Counsel, and CPO (or his designee) and IBM hereby identifies Brenda Decker, Director, IBM Global Government Industry as their respective points of contact.
- c. Except as provided in Section 8 of the Commonwealth Terms and Conditions or as provided in Section 1.5 of ITS55, neither party may transfer or assign this Agreement without the written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assignees.
- d. The parties agree that this Agreement and Client's payment of the Option Charges set forth herein are non-prejudicial to any other purchases by Client under the terms of ITS55 and shall not in any way alter the terms of such other purchases, including renewals of existing software, appliances, maintenance, support, and other products and services.

The undersigned represent that they are duly authorized to enter into this Agreement on behalf of their respective organizations and the parties agree that this Agreement, subject to and including all Associated Documents, is the complete agreement between us and replaces any prior oral and/or written communications between us concerning this subject matter.

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Agreed to:

**Commonwealth of Massachusetts Executive
Office of Technology Services and Security**

Agreed to:

International Business Machines Corporation

By _____
Authorized signature

By _____
Authorized signature

Name (type or print): Sean Vinck

Name (type or print): Maryclare Querzoli

Position (type or print): Assistant Secretary, General
Counsel, and CPO

Position (type or print): Client Manager

Date:

Date: June 28, 2018

Client IBM Customer number:

Client address: 1 Ashburton Place, 8th Floor
Boston, MA 02108

SCHEDULE A – Previously Deployed Listed Software Products

Previously Deployed PA Licenses				
Part #	Product Description	Qty	S&S Coverage Start Date	S&S Coverage End Date
D0ZSWLL	IBM Db2 Advanced Workgroup Server Edition Terabyte License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D58FELL	IBM DB2 Connect Personal Edition Client Device License + SW Subscription & Support 12 Months	2	6/30/2018	6/30/2019
D0ZY0LL	IBM Content Engine Bulk Import Tool for IBM Content Foundation Virtual Server License + SW Subscription & Support 12 Months	3	6/30/2018	6/30/2019
D0N7PLL	IBM FileNet Content Engine Bulk Import Tool Non-Production Virtual Server License + SW Subscription & Support 12 Months	6	6/30/2018	6/30/2019
D0D1QLL	IBM Informix Enterprise Edition CPU Option Processor Value Unit (PVU) License + SW Subscription & Support 12 Months	140	6/30/2018	6/30/2019
D10R9LL	IBM Maximo Anywhere per Authorized User License + SW Subscription & Support 12 Months	30	6/30/2018	6/30/2019
D0GYALL	IBM Maximo Asset Management Authorized User License + SW Subscription & Support 12 Months	43	6/30/2018	6/30/2019
D0GY8LL	IBM Maximo Asset Management Limited Use Authorized User License + SW Subscription & Support 12 Months	67	6/30/2018	6/30/2019
D0AYULL	IBM Maximo Asset Management Scheduler Authorized User License + SW Subscription & Support 12 Months	44	6/30/2018	6/30/2019
D0GZNLL	IBM Maximo for Transportation Authorized User License + SW Subscription & Support 12 Months	89	6/30/2018	6/30/2019
D0S95LL	IBM Maximo for Transportation Limited Use Authorized User License + SW Subscription & Support 12 Months	171	6/30/2018	6/30/2019
D040SLL	IBM Maximo Linear Asset Manager Authorized User License + SW Subscription & Support 12 Months	7	6/30/2018	6/30/2019
D0H36LL	IBM Maximo Mobile Asset Manager Authorized User License + SW Subscription & Support 12 Months	7	6/30/2018	6/30/2019
D0H2YLL	IBM Maximo Mobile Inventory Manager Authorized User License + SW Subscription & Support 12 Months	7	6/30/2018	6/30/2019
D0C29LL	IBM Rational DOORS Next Generation Analyst Floating User Single Install license + SW Subscription & Support 12 Months	2	6/30/2018	6/30/2019
D0GN4LL	IBM Rational Team Concert Developer Floating User Single Install License + SW Subscription & Support 12 Months	72	6/30/2018	6/30/2019
D0GMULL	IBM Rational Team Concert Contributor Floating User Single Install License + SW Subscription & Support 12 Months	48	6/30/2018	6/30/2019
D0PW1LL	IBM Rational Software Architect Designer Floating User Single Install License + SW Subscription & Support 12 Months	15	6/30/2018	6/30/2019

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Previously Deployed PA Licenses				
Part #	Product Description	Qty	S&S Coverage Start Date	S&S Coverage End Date
D59FLLL	IBM WebSphere Portal Server Processor Value Unit (PVU) License + SW Subscription & Support 12 Months	580	6/30/2018	6/30/2019
D0BQTLL	IBM Security AppScan Source for Analysis Authorized User Single Install License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D0WPVLL	IBM Security Qradar SIEM Flow Processor 17XX Install License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D148KLL	IBM Spectrum Scale Standard Server Socket License + SW Subscription & Support 12 Months	2	6/30/2018	6/30/2019
D54NBLL	IBM Rational Application Developer for WebSphere Software Floating User Single Install License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D530BLL	IBM Rational Functional Tester Floating User License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D087SLL	IBM Rational Quality Manager Contributor Floating User Single Install License + SW Subscription & Support 12 Months	52	6/30/2018	6/30/2019
D54LTLL	IBM Rational Performance Tester Floating User License + SW Subscription & Support 12 Months	1	6/30/2018	6/30/2019
D530RLL	IBM Rational Performance Test Pack Virtual Testers 1000 Floating Users License + SW Subscription & Support 12 Months	2	6/30/2018	6/30/2019
D087WLL	IBM Rational Quality Manager Quality Professional Floating User Single Install License + SW Subscription & Support 12 Months	47	6/30/2018	6/30/2019
D56Z5LL	IBM Rational Rose Enterprise Floating User License + SW Subscription & Support 12 Months	11	6/30/2018	6/30/2019
D0DACLL	IBM Rational Software Architect Designer Extension for Integrated Architecture Frameworks Floating User Single Install License + SW Subscription & Support 12 Months	9	6/30/2018	6/30/2019
D0V30LL	IBM Tivoli Composite Application Manager for Applications Single Agent Resource Value Unit License + SW Subscription & Support 12 Months	258	6/30/2018	6/30/2019
D0V2WLL	IBM Tivoli Composite Application Manager For Applications Full Agent Pack Resource Value Unit License + SW Subscription & Support 12 Months	4	6/30/2018	6/30/2019
D0IAMLL	IBM Tivoli Monitoring Resource Value Unit License + SW Subscription & Support 12 Months	1,653	6/30/2018	6/30/2019
D0IAVLL	IBM Tivoli Monitoring for Virtual Environments Resource Value Unit License + SW Subscription & Support 12 Months	24	6/30/2018	6/30/2019
D55W8LL	IBM WebSphere Application Server Processor Value Unit (PVU) License + SW Subscription & Support 12 Months	1,820	6/30/2018	6/30/2019



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Part #	Product Description	Qty	S&S Coverage Start Date	S&S Coverage End Date
D55WJLL	IBM WebSphere Application Server Network Deployment Processor Value Unit (PVU) License + SW Subscription & Support 12 Months	6,180	6/30/2018	6/30/2019
D0453LL	IBM WebSphere MQ File Transfer Edition Processor Value Unit (PVU) License + SW Subscription & Support 12 Months	15,310	6/30/2018	6/30/2019
Previously Deployed zOTC Licenses				
5655X09	IBM Sterling Connect Direct for z/OS Standard Edition	4		
5655X10	IBM Sterling Connect Direct for z/OS Standard Edition S&S	4	6/30/2018	6/30/2019

End of Schedule A